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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 ARTHUR RONESS,

Case No. C18-1030-RSM

11 Plaintiff,

ORDER DENYING PLAINTIFF'S
MOTION FOR RECONSIDERATION

12 v.

13 T-MOBILE USA, INC., a Delaware
14 Corporation,

Defendant.

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16 **I. INTRODUCTION**

17 This matter comes before the Court on Plaintiff Arthur Roness's Motion for
18 Reconsideration. Dkt. #57. On July 11, 2019, this Court denied Plaintiff's Motion for Partial
19 Summary Judgment. Dkt. #54. Plaintiff now requests that the Court reconsider its order based
20 on new evidence obtained from witness depositions. The Court has determined that response
21 briefing from Defendant T-Mobile USA, Inc. ("T-Mobile") is unnecessary. *See* Local Rules W.D.
22 Wash. LCR 7(h)(3).

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RECONSIDERATION
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2 **II. BACKGROUND**

3 In its previous order, the Court denied Plaintiff's Motion for Partial Summary Judgment
4 on three of the five elements for a reasonable accommodation claim under the Washington Law
5 Against Discrimination ("WLAD"): (1) Plaintiff had an impairment that is medically
6 recognizable or diagnosable or exists as a record or history; (2) Plaintiff gave his employer notice
7 of the impairment, or no notice was required because the employer knew about Plaintiff's
8 impairment; and (3) the impairment had a substantially limiting effect on Plaintiff's ability to
9 perform his job, or Plaintiff provided medical documentation to the employer establishing a
10 reasonable likelihood that working without an accommodation would aggravate the impairment
11 to the extent it would create a substantially limiting effect. Dkt. #54 at 7; RCW 49.60.040(7).

12 Plaintiff now requests reconsideration of his Motion for Partial Summary Judgment based
13 on "new evidence" obtained from the depositions of Dr. Randip Singh (Plaintiff's physician), Ms.
14 Melysa Miles (T-Mobile's accommodation manager), and Ms. Zarahy Martinez (representative
15 for T-Mobile's third-party benefits administrator, Broadspire). Dkt. #57 at 2.

16 **III. DISCUSSION**

17 **A. Legal Standard**

18 "Motions for reconsideration are disfavored." Local Rules W.D. Wash. LCR 7(h)(1).
19 "The court will ordinarily deny such motions in the absence of a showing of manifest error in the
20 prior ruling or a showing of new facts or legal authority which could not have been brought to its
21 attention earlier with reasonable diligence." *Id.*

1 **B. New Evidence**

2 Plaintiff's Motion does not argue manifest error by the Court in its prior ruling, nor does
3 it identify a change in the controlling law. Instead, Plaintiff submits deposition testimony as "new
4 evidence" compelling the Court to reverse its previous ruling. For reconsideration of a summary
5 judgment motion, "evidence is not 'newly discovered' if at the time of summary judgment, it
6 'could have been discovered with reasonable diligence.'" *Rohr, Inc. v. UPS-Supply Chain Sols.,*
7 *Inc.*, 939 F. Supp. 2d 1041, 1054 (S.D. Cal. 2013) (quoting *Wallis v. J.R. Simplot Co.*, 26 F.3d
8 885, 892 n. 6 (9th Cir.1994)).

9 Plaintiff's counsel explains that he could not depose Dr. Singh until June 13, 2019 and
10 could not depose Ms. Miles until June 20, 2019. Dkt. #57 at 3. Ms. Martinez was initially deposed
11 on May 22, 2019, but parties stipulated to a second deposition on July 8, 2019 after discovering
12 that T-Mobile's third-party benefits administrator, Broadspire, failed to produce responsive
13 discovery materials. *Id.* However, Plaintiff filed his motion for partial summary judgment on
14 April 11, 2019—nearly three months before the close of discovery and nearly four months before
15 the deadline for dispositive motions. *See* Dkt. #13 (Scheduling Order setting discovery deadline
16 for July 1, 2019; dispositive motions due by July 30, 2019). Plaintiff could have obtained these
17 testimonies prior to moving for partial summary judgment simply by waiting until after
18 completion of discovery to file his motion. *See Rohr*, 939 F. Supp. 2d at 1054 ("Knight could
19 have obtained Ms. West's testimony prior to moving for partial summary judgment if it . . . merely
20 waited until after the completion of expert discovery to file its motion."). Accordingly, none of
21 the deposition testimonies qualify as "newly discovered evidence" for purposes of a motion for
22 reconsideration.

1 Even if the Court considers the evidence, Plaintiff's Motion is without merit. The
2 testimonies do not provide "uncontroverted" evidence warranting summary judgment on these
3 three elements of Plaintiff's WLAD claim. On the contrary, the testimonies raise material
4 disputes of fact regarding Dr. Singh's diagnosis of Mr. Roness's condition and the
5 accommodations that Dr. Singh requested from T-Mobile to address Mr. Roness's diagnosed
6 sleep apnea.

7 The paperwork from Dr. Singh requested that T-Mobile modify Mr. Roness's schedule as
8 follows due to severe sleep apnea: "Monday thru Friday 0:500am -0:300pm excluding
9 weekends." Dkt. #58-1 at 18 (March 22, 2018 letter from Dr. Singh). Ms. Martinez's testimony
10 confirms that these same restrictions were reflected in the paperwork submitted to Broadspire.
11 *Id.* at 13 (Questionnaire listed "modification of work schedule with a proposed time of five a.m.
12 to three p.m. and no weekends" signed by "the healthcare provider"). Contrary to the information
13 provided to T-Mobile, Dr. Singh testified that there was "no medical reason" to exclude Mr.
14 Roness from working weekends. Dkt. #58-1 at 13. In response to whether Mr. Roness should
15 work a swing shift, Dr. Singh ambiguously stated: "Possibly a swing shift." *Id.* Dr. Singh's
16 testimony is likewise unclear as to whether Mr. Roness's accommodation required working
17 certain hours or whether it simply required that he work a consistent schedule, regardless of his
18 shift time. *Compare* Dkt. #58-1 at 13 ("I wouldn't want [Mr. Roness] to work a graveyard shift")
19 with *id.* at 16 ("If he was working a consistent schedule and felt okay and his oximetry was okay,
20 I would think, yeah, he could potentially do that [referring to "try graveyard shift"]).

21 The evidence provided in Plaintiff's Motion does not justify reconsideration of the Court's
22 order denying Plaintiff's motion for partial summary judgment. Viewing these testimonies in the
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1 light most favorable to T-Mobile, there exist genuine issues of material fact as to Mr. Roness's
2 impairment, T-Mobile's notice of Mr. Roness's impairment, and the likelihood that working
3 without accommodation would create a substantially limiting effect.

4 **IV. CONCLUSION**

5 Having reviewed the relevant briefing, attached declarations, and the remainder of the
6 record, the Court hereby finds and ORDERS that Plaintiff's Motion for Reconsideration, Dkt.
7 #57, is DENIED.

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9 DATED this 26 day of August 2019.

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12 RICARDO S. MARTINEZ
13 CHIEF UNITED STATES DISTRICT JUDGE
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